

REMARKS

Claims 1-6, 9-11, 16, 17 and 21-36 are pending in the above-identified application. Support for new claims 35 and 36 is found in original claims 5 and 6. Some changes have been made to some of the claims. It is submitted that all of the presently pending amended claims are fully supported by the original disclosure of the present specification and should be entered of record.

Change in Attorney and Correspondence Address

Enclosed with this Reply are a Certificate Under 37 C.F.R. 3.73(b) Showing Chain of Title and a Revocation of Power of Attorney, Substitute Power of Attorney, and Change in Correspondence Address. Please change the USPTO records to reflect this change in applicant's representative.

Restriction/Election Requirement

The claims of the present application have been subjected to a "Restriction" Requirement under 35 U.S.C. 121 such that subject matter within the claims has been categorized in the Groups I - VII as described at pages 2-4 of the Office Action dated September 20, 2004. This Restriction Requirement is improper, since the identified categories of Groups I - VII do not constitute "independent" or "distinct" inventions as described under MPEP

802.01. Groups I - V are not "independent" which requires that there be "no disclosed relationship" between the Groups. Groups I - V are not "distinct" which requires that the claimed inventions satisfy the various definitions provided at MPEP 806.05 - 806.05(i) which relate to combinations/subcombinations, process/apparatus for the process, process/product, product/apparatus to make product, and product/process of using product. In any case, even if it could be argued that the inventions were "distinct", the Examiner must establish an undue burden for searching and examining all of the restricted subject matter which does not appear to be the case in the present circumstances, since all of Groups I - V are classified in Class 504/subclass 548. In the end, it is clear that there is no basis for any Restriction Requirement under 35 U.S.C. 121, but rather the present Requirement is an "Election Requirement".

Response to Restriction Requirement

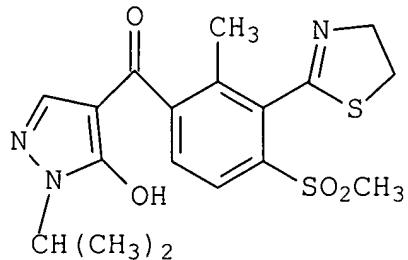
Applicants hereby elect **Group I, with traverse.** Some of the reasons for this traversal are noted immediately above. Group I is defined at the bottom of page 2 to the top of page 3 of the Office Action.

Election Requirement

The claims of the present application have been further subjected to an Election Requirement such that applicants have been required to elect a single disclosed species.

Response to Election Requirement

In response to the Election Requirement, Applicants hereby elect the following compound



The above-noted election is made with traverse for the reasons stated below.

Reasons for Traversal of Election Requirement

The above-noted Election Requirement is respectfully traversed. First, it is submitted that all of Groups I - V include compounds which are classified in Class 504/subclass 548 such that there is no undue burden placed on the Examiner to examine at least all of the subject matter within all of Groups I - V. Second, it is submitted that all of the claimed subject matter within Groups I

- V encompasses compounds which include as a common core structure a diazole linked through a carbonyl group to a phenyl group which is then linked to a nitrogen-containing five-membered heterocyclic ring. This common core structure shared by the claimed compounds indicates that the search and examination for the claimed compounds significantly overlaps such that the claimed compounds should not be separately categorized into Groups I - V. Thirdly, it is noted that the subject matter of the claims of the present application have been categorized into much smaller categories than the scope of the claims of comparable herbicide patents, such as U.S. Patent No. 5,846,907 which includes claims of a scope comparable to the claims of the present application without separation into separate Groups I - V. Thus, it is requested that the Election Requirement be withdrawn.

Conclusion

It is submitted for the reasons stated above that the present claims define patentable subject matter such that this application should now be placed condition for allowance.

If any questions arise regarding the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), the Applicants hereby petition for an extension of two (2) months to December 20, 2004, in which to file a reply to the Office Action. The required fee of \$430.00 is enclosed herewith.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By

  
Andrew D. Meikle, #32,868

**Reminder - change in Correspondence Address**

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Attachment(s): (1) Certificate Under 37 C.F.R. 3.73(b) Showing Chain of Title;  
(2) Revocation of Power of Attorney, Substitute Power of Attorney, and Change in Correspondence Address